

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**MELVIN SHELTON,**

**Plaintiff,**

**v.**

**Case No. 19-CV-1617**

**DEPARTMENT OF VETERANS AFFAIRS,**

**Defendant.**

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**RECOMMENDATION THAT ACTION BE  
DISMISSED FOR FAILURE TO PROSECUTE**

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On November 4, 2019, Plaintiff Melvin Shelton filed this case against the Department of Veterans Affairs. (ECF No. 1.) However, in reviewing Shelton's past filings in this district, the court discovered that he filed a case in the Milwaukee County Circuit Court against the Department of Veterans Affairs in 2015, which was assigned case number 15-CV-3989. The Department of Veterans Affairs subsequently removed that case to federal court, where it was assigned case number 15-CV-766 and assigned to the Honorable Lynn Adelman. Judge Adelman dismissed the case without prejudice on November 15, 2015. (*See* 15-CV-766-LA, ECF No. 9.)

When four years later Shelton filed this action he titled his complaint, "With an Amended 42 U.S.C. sec. 1983 Before the Court From an Order to Dismiss Without Prejudice." The complaint states that it is "Before the Honorable Adel." Shelton put case number "15CV003987" on the cover page and "15CV003989" on the second page. Shelton appears to be under the impression that he is continuing his case from four years earlier. The two complaints allege the same claim: that the Department of Veterans Affairs impermissibly withheld his benefits. (ECF No. 1; 15-CV-766-LA, ECF No. 1-2.) Shelton's complaint in this action, however, includes information from a conversation he had with personnel at the Department of Veterans Affairs in July 2019. (ECF No. 1 at 3-4.)

Further complicating matters, on December 30, 2019, Shelton filed a letter requesting that the court dismiss with prejudice case "15CV003987." (ECF No. 6.) Because the court was not sure which case Shelton was referencing—this case or his already dismissed case before Judge Adelman—the court ordered Shelton to inform the court if he wished to proceed with this case. (ECF No. 7.) And on February 3, 2020, Shelton informed the court he wished to proceed. (ECF No. 8.)

Shelton was then notified by the clerk to either pay the \$400.00 filing fee or fill out a Request to Proceed in District Court Without Prepaying the Filing Fee. (ECF No. 9.) On March 9, 2020, Shelton asked the court to accept installment payments of \$100.00 per month until he had paid the full amount. (ECF No. 10.) Two days later, on March 11, 2020, the court ordered Shelton to either file a Request to Proceed in District Court Without

Prepaying the Filing Fee or pay the filing fee in full by April 1, 2020. (ECF No. 11.) The court stated, "If no action is taken by Shelton, the case will be dismissed for failure to prosecute." (*Id.*)

Shelton has not filed a Request to Proceed in District Court Without Prepaying the Filing Fee or paid the filing fee in full. Therefore, it is now recommended that this action be dismissed pursuant to Civil Local Rule 41(c) (E.D. Wis.).

Your attention is directed to 28 U.S.C. § 636(b)(1)(B) and (C) and Fed. R. Civ. P. 72(b)(2) whereby written objections to any recommendation herein or part thereof may be filed within fourteen days of service of this recommendation. Failure to file a timely objection with the district court shall result in a waiver of your right to appeal.

Dated at Milwaukee, Wisconsin this 22nd day of April, 2020.

  
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WILLIAM E. DUFFIN  
U.S. Magistrate Judge